90-1877

Supreme Court, U.S.
FILED
JUN 5 1991
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RAJENDAR K. SINGAL,

PLAINTIFF

V.

GENERAL MOTORS CORPORATION,

DEFENDANT

_____/

PETITION FOR WRIT OF CERTIORARI PRO SE

Respectfully Submitted,

By: Rajendar K. Singal

Dated: June 3, 1991

Rajendar K. Singal,

PRO SE,

8925 SAILBAY, LAS VEGAS, NV. 89117

(702)-363-3265.

QUESTIONS TO BE ANSWERED WITHOUT DEFENDANT''S FRAUD:

1. Is the plaintiff guilty of misconduct OR is the Defendant guilty of misconduct in the instant case?

2. Were the defendant's action discriminatory due to the plaintiff's race, national origin and age?

3. Due to the fact that the defendant's personnel department vigorously stressed the importance of the employee handbook in their oral presentations, did the defendant violate the implied contract in the employee handbook and wrongfully discharge the plaintiff?

4. Is the defendant guilty of violating the plaintiff's expressed contract and intentionally planned motives to wrongfully discharge the plaintiff during the course of his employment?

5. Is the defendant guilty of racial harrassment to the plaintiff due to racial slurs often cast on the plaintiff by his supervisors?

6. Did the defendant's intentional neglect of the last evaluation of the plaintiff contribute to the harrassment and subsequent discharge of the plaintiff?

7. Is the defendant guilty in their abusive and unfair conduct to plaintiff's CHARACTER, PERSONALITY AND BEHAVIOR to intentionally deny him to compete for higher levels of managerial positions?

8. Did the defendant intentionally violate the expressed and implied contract to deny the plaintiff due recognition when a profit improvement proposal submitted by the plaintiff saved the company millions of dollars?

9. Is the defendant guilty in not letting the plaintiff compete for promotion to higher

managerial levels by unfair and racially motivated acusations of plaintiff's BEHAVIOR, PERSONALITY AND CHARACTER in his performance evaluations even though the defendant admits that the plaintiff is well qualified and extremely knowledgeable and has performed to the full satisfaction of the defendant?

10.Is the defendant guilty of intentionally not promoting plaintiff to higher managerial levels due to his race, national origin and age, and also because the defendant felt threatened by the plaintiff's potential to rise to highest managerial levels?

11.Was the plaintiff intentionally bypassed in promotion, job assignments and merit raises by the caucasian employees due to defendant's actions against the plaintiff?

12.Did the defendant retaliate against the plaintiff due to his race and national origin when he followed defendant's OPEN DOOR POLICY

in order to resolve questions in his promotion and performance evaluations?

13.Is the matter of great public importance due to the fact that the plaintiff belongs to a more recent ethnic community who have established their home in this country within the last 20 years or so, and that their CHARACTER, BEHAVIOR AND PERSONALITY are prejudged by the employer?

14.Should the plaintiff be allowed to collect punitive damages for his wrongful termination by the defendant?

15.Should the plaintiff be allowed to collect damages for his gross mental anguish, pain and suffering for racial harassment and for his discrimination in employment due to his race, national origin, and age by the defendant?

16.Should the plaintiff be allowed to collect all his expenses, losses, back wages, and

loss of retirement benefits and other career losses due to defendant's actions?

17.Should this court make the EMPLOYEE HANDBOOK legally binding on the defendant to fulfill all the promises mentioned in that book which is referred to by the defendant for problem resolutions, and which has been grossly violated by the defendant in the instant case?

18.Should this court make this IMPLIED CONTRACT expressed in this DEFENDANT'S EMPLOYEE HANDBOOK into a legal basis to resolve matters of contention in the instant case?

19.Should the defendant be allowed to prevail in this matter against the plaintiff based on defendant's Fraud, lies, fabrications and distortions in this matter as evidenced from their false WITNESS LIST, fabricated and unsubstentiated statements of

the purported witness list submitted by the defendant in WAYNE COUNTY CIRCUIT COURT?

20.Should there be a JURY TRIAL in this matter so that the matter is adjudicated on its merits?

21.IS RES-JUDICATA THE ANSWER TO ALL THE QUESTIONS?

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IN THE

SUPREME COURT OF THE UNITED STATES

RAJENDAR K. SINGAL, UNITED STATES APPEALS
PLAINTIFF COURT, SIXTH CIRCUIT COURT-
V. CASE NO. 90-1674.

GENERAL MOTORS CORPORATION
DEFENDANT

RAJENDAR K. SINGAL,
8925 SAILBAY
LAS VEGAS, NV. 89117.
(702)-363-3265

JAIMIE R. GOODMAN P34769
ATTORNEY FOR DEFENDANT,
401 S. WOODWARD AVENUE, SUITE 400
BIRMINGHAM, MI. 48009
(313)-645-0800

PETITION FOR WRIT OF CERTIORARI PRO SE

Now comes plaintiff, Rajendar K. Singal, bringing this petition before the Honorable Supreme Court of United States to claim his rights for a JURY TRIAL in the lower US District Court in Detroit on the unresolved questions on their merit in the instant case. The petitioner respectfully submits that the questions are unresolved due to a gross amount of FRAUD, LYING, DISTORTIONS, and FABRICATION exercised in the instant case by the defendant in the Michigan Courts to get the judgement in their favor without a TRIAL.

The lower courts have grossly erred in not granting a JURY TRIAL to the plaintiff in resolving the unanswered questions without defendant's fraud. Hence, these questions are submitted before this Honorable Court, THE HIGHEST COURT IN THE LAND, for consideration to award the plaintiff a JURY TRIAL in order to adjudicate the matter on its merits.

ABOUT THE PLAINTIFF

The plaintiff, Rajendar Kumar Singal originally belongs to INDIA, and came to the UNIVERSITY OF WINDSOR, CANADA for his Ph.D. studies in Chemistry in September of 1966, after obtaining his Masters degree in Chemistry in 1960 from Panjab University, Chandigarh, INDIA. He immigrated to the UNITED STATES OF AMERICA in June of 1969 and is now a naturalized citizen of United States. He is of HINDU religion, is of brown complexion and speaks ENGLISH LANGUAGE well but has some accent in it.

He has been working as a CHEMIST since 1969 in UNITED STATES and has made UNITED STATES as his permanent home. He has worked for a DENTAL COMPANY in Michigan for about 3 years, has worked for the DEFENDANT for more than 8 years, and is now employed with UNITED STATES DEPARTMENT OF ENERGY'S Contractor in LAS VEGAS, NEVADA, since August of 1984.

He has always worked most honestly, most sincerely, discharging his duties to his

employer. He has made several notable contributions to the QUALITY CONTROL aspects which have been responsible in saving Millions of Dollars to the defendant. He requested fairness in his performance evaluations through defendant's OPEN DOOR POLICY. The performance evaluations are a pre-requisite for promotion to higher managerial positions. The defendant never liked the use of OPEN DOOR POLICY by the plaintiff even though its use is encouraged by the defendant in their employee handbook to resolve matters of conflict by the plaintiff. The plaintiff also sought promotion to higher managerial levels based on his qualifications, experience and excellent contributions while he was employed by the defendant. Instead, he was fired by the defendant on February 7, 1984 subsequent to plaintiff's argument with his supervisor regarding intentional delays in writing plaintiff's performance evaluation by his supervisor.

He has spent a considerable amount of money on this case as ATTORNEY FEES and other Court Costs in Michigan, and has been left with a big financial hole due to defendant's actions against him. It is almost impossible for him to spend more money on the ATTORNEY FEES in this matter. HENCE, HE HAS DECIDED TO PROCEED WITH THE CASE IN SUPREME COURT OF UNITED STATES PRO SE. He has absolutely no background in the field of law.

ISSUES PRESENTED:

The plaintiff, Rajendar K. Singal seeks a JURY TRIAL on the Defendant's actions against him. The defendant's actions are:

1. Plaintiff's discrimination in employment due to his national origin, race, and age.

2. Plaintiff's wrongful discharge due to his implied and express contract with the defendant, and due to his excellent performance on the job with the defendant.

3. Plaintiff's Racial Harassment by the defendant.

4. Defendant's fraud in his witness list, and lies, distortions and fabrications in the purported witness list, and concealment of evidence by the defendant from the plaintiff's witnesses who are presently employed by the defendant, by issuing them threats if they were to testify for the plaintiff.

5. Defendant's racially motivated and malicious characterization of plaintiff's character, personality and behavior, in writing in his performance evaluations and orally by plaintiff's supervisors.

6. Racial Slurs cast upon the plaintiff by his supervisors during the course of plaintiff's employment with the defendant.

The plaintiff's requests are:

1. Recovery by the plaintiff from the defendant of all damages for mental anguish, of all losses and expenses, punitive damages, retirement benefits, back wages and back to employment with the defendant, through JURY TRIAL of all the issues involved in this matter.

2. Plaintiff's request to amend his original complaint filed in WAYNE COUNTY CIRCUIT COURT IN MICHIGAN, to add in it AGE DISCRIMINATION COUNT because it was erroneously omitted by his attorney.

3. Permission by the Supreme Court to litigate plaintiff's AGE DISCRIMINATION count through JURY TRIAL.

4 .Employee Handbook given to the plaintiff by the defendant to be legally binding as contractual agreement between the plaintiff and defendant.

A BRIEF REVIEW OF THE CASE.

WAYNE COUNTY CIRCUIT COURT-CASE NO.85-528168-CK.

There is overwhelming evidence in this case of discrimination of the plaintiff by the defendant due to his race and national origin. There is overwhelming evidence of racial and malicious characterization of plaintiff's CHARACTER, PERSONALITY AND BEHAVIOR, in writing in his performance evaluations, and orally in racial slurs by his supervisors throughout the course of his employment by the defendant. Some of these racial slurs suffered by the plaintiff are mentioned below:

"A GOOD INDIAN IS A DEAD INDIAN".

"YOU ARE ONLY A HINDU FOR ME".

"SHOOT THIS INDIAN".

"AN ASSHOLE, A JELLYFISH, A BASTARD, A LIAR AND A PREVARICATOR".

"I SHALL NAIL YOU DOWN".

"DUMB INDIAN".

"HORNY INDIAN".

"CRAZY INDIAN".

"YOU SON OF A BITCH, YOU ARE A PAIN IN MY ASS".

"YOUR CAREER IS IN MY HANDS, I SHALL RAPE YOUR ASS".

"THE BOSS SHOULD BE PROMOTED FIRST BEFORE YOU HAVE A CHANCE TO MAKE IT".

"I KNOW, HOW TO BUTCHER THIS SACRED COW".

"YOU GO TO INDIA TO HAVE SEX WITH OTHER WOMEN".

"YOU ARE A CON MAN AND I SHALL NAIL YOU DOWN".

"YOU INDIANS STICK TOGETHER".

There is overwhelming evidence that Caucasian employees were given better treatment, better job assignments and better merit raises than the plaintiff in order to subsequently promote these employees over the plaintiff. The caucasian employees Mr. T. Cullum and Mr. John Boryshewicz were not fired for threatening to physically assault the plaintiff on the job, and for casting racial

remarks on the plaintiff by them. The plaintiff had reported all the incidents to his supervisors but these two employees were condoned and it is the feeling of the plaintiff that these emplpyees may have been encouraged by the supervisors to fight with the plaintiff in order to transfer the plaintiff from the LIVONIA INSTRUMENTATION LABORATORY so that plaintiff's chances for promotion are ruined and their chances for promotion are improved.

There is overwhelming evidence of plaintiff's excellent performance on the job and admitted so by the defendant in plaintiff's performance evaluations. Yet, the supervisors cast serious remarks intentionally on plaintiff's CHARACTER, PERSONALITY, AND BEHAVIOR in order to shoot his chances down for promotions in the future. Plaintiff used defendant's OPEN DOOR POLICY as described in the EMPLOYEE HANDBOOK but plaintiff was never allowed to prevail by the higher levels of MANAGEMENT in the company who conducted the

OPEN DOOR POLICY interviews with the plaintiff. Management retaliated against the plaintiff when he complained about his unfair treatment in performance evaluations. Management threatened to fire the plaintiff for complaining about his performance evaluations and for his complaints about not promoting him and about the complaints about not letting him compete with other employees fairly due to unfair and biased performance evaluations. Defendant's OPEN DOOR POLICY specifically states that the EMPLOYEE WILL NOT BE RETALIATED UPON FOR USING THE POLICY, but in the plaintiff's case, Management always retaliated upon the plaintiff when they issued the decision, as well as retaliated with racial slurs on the plaintiff during the time, he followed defendant's OPEN DOOR POLICY in order to harass him. Plaintiff did everything possible in order to settle his employment matters with the Management, but he was always treated with racial hatred when he requested Management to correct his

performance evaluations and requested a fair and unbiased evaluation.

There is overwhelming evidence that plaintiff had repeatedly requested for promotion to higher levels of management based on plaintiff's qualifications, experience and excellent on the job performance. Plaintiff was never promoted even once although lesser qualified and lesser experienced than the plaintiff employees who were caucasian were promoted to higher managerial positions.

There is overwhelming evidence of intentional delays in writing plaintiff's performance evaluation by his supervisor in order to harass the plaintiff to subsequently discharge him from employment.

THERE IS OVERWHELMING EVIDENCE IN THIS CASE OF FRAUD, LIES, DISTORTIONS, FABRICATIONS AND CONCEALMENT OF EVIDENCE BY THE DEFENDANT.

There is overwhelming evidence in this case of gross violations of plaintiff's implied contract with the defendant due to defendant's employee handbook, and the

expressed contract which the plaintiff was made to sign by the defendant several years after he began his employment with the defendant.

HOW CAN SUMMARY JUDGEMENT AS HANDED DOWN IN THIS CASE BY THE COURT TO THE PLAINTIFF BE THE ADJUDICATION OF THE MATTER ON ITS MERITS? ISN'T IT A GROSS INJUSTICE TO THE PLAINTIFF? THE ONLY EFFECTIVE SOLUTION TO THIS CASE IS A JURY TRIAL WHICH THE PLAINTIFF REQUESTS FROM THE SUPREME COURT IN ORDER TO ADJUDICATE THE ISSUES ON ITS MERITS. THE PLAINTIFF FURTHER SUBMITS THAT ALL THE QUESTIONS RAISED IN THIS CASE AS THE PLAINTIFF HAS ALSO DESCRIBED THEM IN THIS PETITION CAN ONLY BE ANSWERED AND RESOLVED ON THEIR MERIT THROUGH A JURY TRIAL OF THIS MATTER. THIS HONORABLE COURT SHOULD NOT ALLOW THE LOWER WAYNE COUNTY CIRCUIT COURT TO DEAL AN GROSSLY UNFAIR DEADLY BLOW IN THE FORM OF SUMMARY JUDGEMENT TO THE PLAINTIFF, AND HE FURTHER REQUESTS A REVERSAL OF THIS JUDGEMENT IN FAVOR OF A JURY TRIAL IN THE INSTANT CASE DUE TO THE OVERWHELMING

EVIDENCE OF PLAINTIFF'S DISCRIMINATION AND WRONGFUL DISCHARGE BY DEFENDANT'S ACTIONS.

MICHIGAN COURT OF APPEALS: CASE NO. 107418:

The plaintiff appealed the Wayne County Circuit Court judgement to the Michigan Appeals Court but the Appeals Court affirmed the Circuit Court's Judgement in the face of overwhelming evidence in the instant case of plaintiff's discrimination and wrongful discharge by the defendant. Plaintiff submits that Michigan Appeals Court did not adjudicate the matters in this case based on their merit, but did adjudicate based on defendant's FRAUD, LIES, DISTORTIONS AND FABRICATIONS.

HENCE, THE PLAINTIFF REQUESTS A JURY TRIAL FROM THE ORDER OF THE SUPREME COURT OF UNITED STATES IN ORDER TO ADJUDICATE THE MATTER BASED ON ITS MERIT.

MICHIGAN SUPREME COURT: Plaintiff filed with Michigan Supreme Court Delayed Leave To Appeal but it was denied on October 16, 1989 because Statutes Of Limitations had expired.

UNITED STATES DISTRICT COURT IN DETROIT, MICHIGAN: CASE NO.: 89-CV-73560-DT:

The plaintiff filed the lawsuit against the defendant in the Federal Court in Detroit to get the JURY TRIAL on this matter. He also amended his original complaint by adding a legitimate count of AGE DISCRIMINATION which was erroneously omitted by plaintiff's attorney from the complaint filed in WAYNE COUNTY CIRCUIT COURT. The judgement of the Court was again in favour of Defendant based on DOCTRINE OF RES-JUDICATA. Pain and suffering of the plaintiff was further aggravated because of Court's Judgement and defendant's actions due to the fact that the matter was not adjudicated on its merit. HENCE, PLAINTIFF REQUESTS THAT SUPREME COURT ORDER A JURY TRIAL IN THE INSTANT CASE SO THAT THE MATTER IS ADJUDICATED ON ITS MERIT.

FEDERAL APPEALS COURT-SIXTH CIRCUIT, CINCINNATI, OHIO: CASE NO. 90-1674.

The plaintiff appealed the case to the Honorable Sixth Circuit Court. The defendant again prevailed and the judgement of the Lower Court-US District Court in Detroit was affirmed based on the Doctrine of Res-Judicata.

The plaintiff filed the PETITION FOR RE-HEARING with the Court but was denied on March 13, 1991. Hence, the plaintiff brings this matter before the Honorable Supreme Court and requests JURY TRIAL in the instant case so that the matter is adjudicated on its merit. So far, the matter is adjudicated by the Courts based on Defendant's FRAUD, LIES, DISTORTIONS AND FABRICATIONS. The plaintiff hopes and respectfully submits to the Honorable Supreme Court Of United States Of America to give truth, honesty and sincerity of the plaintiff an opportunity for a JURY TRIAL so that plaintiff is able to recover all his damages and losses from the defendant. The plaintiff is in a big hole financially due to defendant's actions

against him and his pain and suffering have increased due to defendant's Fraud, Lies, Distortions, Fabrications and Concealment of evidence to win this case against the plaintiff.

THE PLAINTIFF FURTHER SUBMITS AND RESPECTFULLY REQUESTS THE HONORABLE SUPREME COURT TO HEAR PLAINTIFF'S CASE AND DECIDE ON A JURY TRIAL TO ADJUDICATE THE ISSUES ON THEIR MERIT. THE LOWER COURTS HAVE IGNORED OVERWHELMING EVIDENCE IN THE INSTANT CASE FAVORING PLAINTIFF'S VIEWPOINT REGARDING HIS DISCRIMINATION AND WRONGFUL DISCHARGE BY THE DEFENDANT. THEREFORE, THE PLAINTIFF RESPECTFULLY SUBMITS THAT THE SAID COURTS HAVE GROSSLY ERRED IN NOT GRANTING A JURY TRIAL ON THIS MATTER.

CONCLUSIONS

THE DOCTRINE OF RES-JUDICATA is not the answer to adjudicate the matter on merits of its action due to overwhelming evidence of Discrimination and Wrongful Discharge of the Plaintiff by the Defendant's actions, and due to an overwhelming evidence of gross amount of FRAUD, LIES, DISTORTIONS AND FABRICATIONS by the Defendant against the Plaintiff in the instant case. The plaintiff faced all kinds of DISCRIMINATION, THREATS, HARRASSMENT AND INTIMIDATION from Management throughout the course of his career when he requested to be promoted based on the merits of his qualifications, performance and contributions to the defendant's operations. Hence, it is grossly unfair to dispose the matter by Summary Judgement by Wayne County Circuit Court, and Res-Judicata should not apply in the instant case.

This Honorable Court should make THE EMPLOYEE HANDBOOK legally binding as an Implied

Contract of the Defendant with the Plaintiff considering that all buisness interests of the Defendant were well served during the time plaintiff was employed by the defendant. Further, the defendant did not intentionally promote the plaintiff and intentionally harassed the plaintiff, even though defendant admits that plaintiff was extremely knowledgeable and has made good technical contributions to the defendant's Quality Control Aspects of the Car, and to their WasteWater Treatment Operations.

If there is anything wrong with the plaintiff as an employee as the defendant has strongly punished him by challenging his character, personality and behavior, then he would not have been a stable and productive employee, which he is and always has been, before and after getting fired by the defendant. Hence, it is very obvious that the defendant was wrong and discriminatory in firing the plaintiff.

Those who should have been fired by the defendant are still working for the defendant because they are caucasian, and the defendant has also promoted them soon after firing the plaintiff. The behavior and motives of the defendant towards the plaintiff in the instant case are very clear from defendant's actions, that they were racial, malicious and discriminatory because of plaintiff's race, national origin and age.

Plaintiff should be allowed to amend his original complaint with respect to his legitimate AGE DISCRIMINATION claim because it was erroneously omitted by his attorney.

Plaintiff should be allowed to collect all damages, losses, and compensation for pain, suffering and mental anguish due to defendant's actions against him. Plaintiff submits that he is in a big financial hole due to no retirement benefits even after working for the defendant for several years, and several thousands of dollars spent out of

his meager savings and hard earned income on attorney fees and other court costs. He should also be allowed to collect punitive damages from the defendant for the intentional harassment and subsequent wrongful discharge which has resulted in gross Career Injury to the plaintiff during and after his employment by the defendant.

WHEREFORE, THE PLAINTIFF RESPECTFULLY SUBMITS AND FURTHER REQUESTS THAT THIS HONORABLE COURT SHOULD HEAR THIS CASE AND SHOULD ORDER A JURY TRIAL IN THE INSTANT CASE, SO THAT THE MATTER IS ADJUDICATED ON THE MERITS OF ITS ACTION. THE LOWER COURTS HAVE BEEN GROSSLY UNFAIR TO THE PLAINTIFF IN NOT LETTING A JURY TRIAL TAKE PLACE IN THE INSTANT CASE, AND THE PLAINTIFF REQUESTS THAT THIS HONORABLE COURT SHOULD REVERSE PREVIOUS DECISIONS IN FAVOR OF A JURY TRIAL IN THE INSTANT CASE.

THE PLAINTIFF REQUESTS THAT DUE TO ALL THE REASONS MENTIONED IN THE INSTANT CASE,

PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED TO ADJUDICATE THE MATTER ON ITS MERITS.

Respectfully Submitted,

By: Rajendar K. Singal

(Rajendar K. Singal)

PRO SE

8925 SailBay, LAS VEGAS, NV.89117.

(702)-363-3265.

Dated: June 1, 1991.

APPENDIX

NO. 90-1674

UNITED STATES COURT OF APPEALS

FOR THE SIXTH DISTRICT

RAJENDAR K. SINGAL,

Plaintiff-Appellant,

v.

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

FILED

MAR 13 1991

LEONARD GREEN,

CLERK

ORDER

BEFORE: MILBURN and GUY, Circuit Judges, and Brown, Senior Circuit Judge.

Appelant petitions for a rehearing of this court's February 7, 1991 order affirming the district court's dismissal of his claims of employment discrimation, breach of express and implied employment contract, and tort, arising out of his discharge from employment in February 1984.

After careful consideration of the petition for rehearing, the panel concludes that it has not overlooked or misapprehended

any point of law or fact in its order of February 7, 1991. Fed. R. App. P. 40(a).

Accordingly, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

Sd/-

_____

CLERK

NO. 90-1674

UNITED STATES COURT OF APPEALS

FOR THE SIXTH DISTRICT

RAJENDAR K. SINGAL,

Plaintiff-Appellant,

v.

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

FILED

FEB 7 1991

LEONARD GREEN,

CLERK

ORDER

BEFORE: MILBURN and GUY, Circuit Judges, and Brown, Senior Circuit Judge.

Rajendar K. Singal, a pro Nevada citizen, appeals the district court's order dismissing his employment discrimination action. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and the briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. 34(a).

Seeking reinstatement and monetary damages, Singal sued his former employer, General Motors Corporation (GMC). He presented claims sounding in age and national origin discrimination, breach of express and implied contract, and tort arising out of his discharge from employment in February 1984. Upon GMC's motion, the district court dismissed Singal's complaint under Fed. R. Civ. P. 12(b) (6), finding that the complaint was barred by the doctrine of res judicata. The court
denied Singal's cross-motion for default judgement based on GMC's allegedly untimely answer to his complaint.

On appeal, Singal argues that: (1) GMC's response to his complaint was untimely; (2) res judicata should not be applied because GMC's state court judgement was obtained by fraud and without a trial; and (3) his age discrimination claim should be allowed to continue because it was erroneously omitted

from his 1985 action. In his brief, Singal requests the appointment of counsel.

Upon review, we hereby deny the request for counsel and affirm the district court's order filed May 11, 1990 for the reasons stated there in. Rule 9(b) (5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Sd/-

_____

Clerk

NO. 90-1674

UNITED STATES COURT OF APPEALS

FOR THE SIXTH DISTRICT

RAJENDAR K. SINGAL,

Plaintiff-Appellant,

v.

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

FILED

FEB 7 1991

LEONARD GREEN,

CLERK

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denied Singal's cross-motion for default judgement based on GMC's allegedly untimely answer to his complaint.

On appeal, Singal argues that: (1) GMC's response to his complaint was untimely; (2) res judicata should not be applied because GMC's state court judgement was obtained by fraud and without a trial; and (3) his age discrimination claim should be allowed to continue because it was erroneously omitted

from his 1985 action. In his brief, Singal requests the appointment of counsel.

Upon review, we hereby deny the request for counsel and affirm the district court's order filed May 11, 1990 for the reasons stated there in. Rule 9(b) (5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Sd/-

_____

Clerk

Issued as Mandate: March 29, 1991

Costs: None

Filing Fee.....$

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Total.....$

A True Copy

Attest:

LEONARD GREEN, Clerk

By Sue Johnson

Deputy Clerk.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

RAJENDAR K. SINGAL,

Plaintiff,

CIVIL ACTION

NO. 89-73560

HON. RICHARD SUHRHEINRICH

v.

GENERAL MOTORS CORPORATION,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendant General Motors Corporation's motion to dismiss and plaintiff's motion to dismiss defendant's motion. Pursuant to Local Rule 17(1)(2), the Court shall decide this matter without oral argument.

This matter arises out of plaintiff's discharge from his position as a chemist with General Motors on February 7, 1984. Plaintiff began work at defendant's Cadillac Motor Dividsion on September 22, 1975. Plaintiff brought suit against General Motors in Wayne Circuit Court in late 1985 alleging (1) discrimination based on his race and national origin (India), (2) negligent evaluation, and (3) breach of both express and implied employment contracts.

Once discovery was complete, General Motors moved for summary judgement. The circuit court ruled in favor of General Motors, dismissing plaintiff's discrimination, negligent evaluation, and breach of implied contract claims with prejudice. Plaintiff's express contract claim was settled in plaintiff's favor and he received the remainder of the salary owed him for the month of February 1984.

Plaintiff subsequently appealed the Circuit Court's grant of summary judgement. The court of appeals affirmed the Circuit Court's opinion on May 25, 1989. Singal v. General Motors Corporation, 179 Mich. App. 497 (1989). Plaintiff's leave to appeal to the Michigan Supreme Court was denied on October 16, 1989.

On December 7, 1989, plaintiff filed suit in this Courty alleging that his February 1984 discharge from General Motors was motivated by race discrimination, age discrimination, and violated both express and implied employment contracts. Defendant then filed the instant motion to dismiss under Rule 12 (b)(6), on the grounds that the present suit is barred by the doctrine of res judicata as each of these claims either were or could have been litigated in plaintiff's original state court suit.

In response to defendant's motion, plaintiff filed a motion to dismiss

defendant's motion and for judgement, alleging that the defendant had not answered the complaint in a timely manner. In deciding this matter, the Court will first consider whether the defendant's answer was filed in a timely manner.

Plaintiff initially sent a copy of the complaint by certified mail to the attorney who had represented General Motors in the previous state action. Defendant's attorney, Jamie Goodman, admits in his affidavit that he received an unsigned copy of the complaint by certified mail on December 8, 1989. Mr. Goodman, however, is not an employee of GM, nor is he authorized to receive service of process on GM's behalf. (Goodman Affidavit.) When plaintiff did not receive an acknowledgement of service of the complaint, a second copy of the complaint was sent by certified mail to an agent of GM authorized to receive service. This second copy was

received on January 22, 1990. General Motors mailed thier answer on February 9, 1990.

Given the fact that the complaint mailed on December 8, 1989 was unsigned and was not sent to a person authorized to receive service, it is apparent that GM was not properly served with the complaint until January 22, 1990. As a result, General Motor's February 9 answer was timely made.

When a final judgement has been entered on the merits of any action, the doctrine of res judicata bars parties from relitigating in a subsequent action matters which were raised or could have been raised in the prior action. Nathan v. Rowan, 651 F.2d 1223 (6th Cir. 1981). Matters are considered identical for res judicata purposes when the "arise out of the same transaction or occurrence and seek recovery for the same injury...." Silcox v. United Trucking Service, Inc., 687 F.2d 848, 852 (6th Cir. 1982).

After examining plaintiff's complaint, it is apparent that the claims raised here are the same as those of his 1985 suit, with the exception of his allegation of age discrimination. See Singal v. General Motors Corp., 179 Mich. App. 497 (1989). This claim, however, is one which should have been asserted in his original suit, as it arose out of the same incident and facts alleged in the 1985 complaint.

The incidents surrounding the plaintiff's discharge from General Motors has been fully adjudicated in the Michigan courts. Plaintiff is not entitled to a second day in court simply by asserting a new theory of recovery for the alleged invasion of his rights.

Accordingly,

IT IS HEREBY ORDERED that the defendant's motion to dismiss is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion to dismiss defendant's motion is DENIED.

Signed by

Richard F. SUHRHEINRICH

United States District Judge

DATED: MAY 10 1990

IN THE

SUPREME COURT OF THE UNITED STATES

RAJENDAR K. SINGAL,
Plaintiff,

v.

GENERAL MOTORS CORPORATION
Defendant

PROOF OF MAILING

I, the undersigned, hereby certify that on JUNE 3, 1991, I have mailed forty copies of the PETITION FOR WRIT OF CERTIORARI PRO SE by certified U.S. Mail to the clerk of the Supreme Court of the United States Court, 1 First Street, N.W., Washington D.C. 20543.

I have also separately mailed by first class mail one copy of the PETITION FOR WRIT OF CERTIORARI PRO SE to the defendant's attorney at the address given below.

Jaimie R. Goodman, Esq.
401 S. Woodward Avenue, Ste. 400
Birmingham, Michigan 48009

Rajendar K. Singal

Rajendar K. Singal
8925 Sail Bay Drive
Las Vegas, Nevada 89117

Dated: June 3, 1991

Supreme Court, U.S.
FILED
SEP 16 1991
OFFICE OF THE CLERK

NO. 90-1877.

IN THE

SUPREME COURT OF THE UNITED STATES

RAJENDAR K. SINGAL,

PETITIONER

V.

GENERAL MOTORS CORPORATION,

RESPONDENT

_____/

SUPPLEMENTAL BRIEF TO THE WRIT OF CERTIORARI TO THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS.

Respectfully Submitted,

By: Rajendar K. Singal

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Dated: September 16, 1991.

QUESTIONS

1. Is the Employee Handbook legally binding on the Respondent for making decisions pertaining to employee's employment?

2. Is the respondent guilty for breaking implied covenant of good faith and fair dealing in the contract with the petitioner due to Employee Handbook?

3. Did the respondent racially discriminate the petitioner by firing him?

4. Should the petitioner be allowed to amend his original complaint with respect to AGE BIAS COUNT?

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IN THE

SUPREME COURT OF THE UNITED STATES

RAJENDAR K. SINGAL,

Petitioner DOCKET NO. 90-1877

V.

GENERAL MOTORS CORPORATION,

Respondent

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BEST AVAILABLE COPY

SUPPLEMENTAL BRIEF FOR WRIT OF CERTIORARI TO THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS.

The purpose of this supplementary brief from the petitioner is to bring to the attention of the Honorable Court information very important to some of the issues raised in the instant case due to two recently decided cases, one by the Supreme Court and the second by Federal Court in New Jersey.The information on these two decisions became available to the petitioner after he had filed his petition for writ of certiorari.

The petitioner has requested that General Motors Employee Handbook should be decided legally binding as an implied contract of the petitioner with the repondent. This employee handbook was given to the petitioner on the first day he started working for General Motors in September of 1975. Further, the personnel department of CADILLAC MOTORS had

be read thoroughly by him because it is used for resolving any and all employee problems. In the instant case, the respondent grossly violated the terms stated in this handbook due to petitioner's race, national origin and age. Following statements are quoted from the Employee Handbook:

Pages 2 and 3 Of The Employee Handbook:

"1. YOUR WORK ENVIRONMENT: Our personnel policies are designed to help build a work environment which recognizes you as a valuable resource, whose full involvement in the buisness is not just desirable but essential to the success of the Corporation. In turn, General Motors trusts that you will give your very best efforts and will work cooperatively with others to accomplish General Motors' buisness goals. Thus, there is a strong partnership between you, your supervisor and all other GM people, in which the good of each person depends on the willing cooperation and trust of all the

others. To foster this environment, GM has three overall employee objectives. First, to help assure that you are treated with dignity and respect in relationship with the Corporation; second, to recognize you as an individual, and third, to help you and all GM people grow on the job and work as a team so that we will have the highest quality work force."

"EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION.

In keeping with our goals of individual recognition and treatment characterized by dignity and respect, we extend hiring and promotional opportunities to qualified applicants and employees on an equal basis regardless of age, race, color, sex, religion or national origion.

We regard sexual harassment as a violation of Equal Employment Opportunity Policy. You should express your concerns if you feel you have been subject to harassment, and you should have no fear of retaliation by raising

them. All complaints will receive a thorough and prompt investigation".

"Advancement Based On Merit. General Motors has a well-defined selection process which is in operation at every GM location to make decisions regarding hiring, promotions, transfers and other forms of movement. Selection decisions must be based exclusively on merit, and capable of withstanding critical review".

ON PAGES 7 AND 8 OF EMPLOYEE HANDBOOK:

"THE GM APPRAISAL PROGRAM":Relationship and responsibilities are, of course a two way street. General Motors knows that if you are to do your job most effectively, you need the support of a knowledgeable supervisor. As a consequence, GM supervisors are selected carefully and trained to provide you and others with coaching, counseling, recognition and constructive assistance, when it is needed. Your supervisor will also take time to be a good listener when you have questions or concerns about your work, your career or

any other aspect of your relationship to General Motors.

Three important tools will help you and your supervisor meet your responsibilities and will help each of you develop a strong working relationship with the other. These are the GM APPRAISAL PROGRAM, THE OPEN DOOR POLICY, AND QUALITY OF WORK LIFE ACTIVITIES.

Your supervisor will appraise your performance at least annually. The GM Appraisal Program is designed to be fair and to involve you completely. It also calls for you and your supervisor to have periodic, informal discussions about how you are doing so that there will be no surprises when your performance is formally appraised.

When it is time to write your appraisal, your supervisor will give you an opportunity to complete an appraisal warksheet.

During the appraisal interview, all sections of the written appraisal form and your appraisal worksheet will be discussed with you. You will be asked to write your comments

and sign the appraisal form, to acknowledge that your appraisal interview has taken place. The completed forms are then reviewed by the Personnel Department to assure that all required steps have been followed. <u>If you disagree with your appraisal, you are encouraged to use the GM Open Door Policy.</u>

<u>"THE OPEN DOOR POLICY"</u>

"The objective of the Open Door Policy is to make sure you have an open channel of communication to your supervisor and to other managers when you have a question, concern or complaint about any aspect of your relationship with General Motors.

Although it focuses on resolving differences- and that is an important objective - the intent of the Open Door Policy is that the "doors" of management are open to you for any reasonable purpose. For example, if you have questions about GM policies, or if you want guidance concerning training and development or career opportunities, or if you wish to discuss any other matter, you are encouraged

to talk with your supervisor. You should understand, of course, that using the Open Door will not always result in the action you desire. However, it does provide you the opportunity to review your concerns not only with your supervisor but , if necessary, with higher levels of management. It also guarantees an objective and thorough review of your situation.

To use the Open Door, you should follow the steps below:

- Talk with your supervisor as soon as a concern or question arises. It is your supervisor's responsibility to take time to discuss any questions or concerns related to your GM employment.
- If you and your supervisor cannot resolve your concern, your supervisor will help you seek resolution through higher levels of management in your department.
- Although you are urged to talk with your supervisor first, there may be situations in which you prefer not to do so. In these

instances, the Open Door permits you to contact the Personnel Department. The Personnel Department generally will work through your supervisor or a higher level manager to resolve the matter within your department. If the matter cannot be resolved in your department, the Personnel Department will arrange for a review by the head of your employing unit.

- If your questions or concerns have not been resolved to your satisfaction within your unit, division or Central Office Staff, you are free to request a further review through General Motors Central Office, in Detroit. These requests should be made in writing to the Vice President, Personnel Administration and Development Staff, who will make the final determination for the Corporation. Your case will be reviewed with you and your management, and you will receive written response.

<u>When using the Open Door you are assured not only freedom from reprisal, but also active assistance from your management to resolve</u>

your concerns at the lowest possible level in a timely manner. To this end, there is a designated person in your Personnel Department whose responsibility is to assure that your concern is understood clearly by management. The policy is designed to protect you from improper treatment by assuring you an open channel of communication and a thorough review of the facts and circumstances surrounding your situation."

"JOB SECURITY":

On page 24 of the employee handbook:

"The management of General Motors recognizes that job security is important to GM and to its people, and the Corporation has a good record of providing job security for its salaried employes. Continuous employment is important because employees who are secure in their jobs will better direct their attention to the objectives of the job and because layoffs place a real burden on the affected employes and their families".

FACTS IN THE INSTANT CASE.

Facts in the instant case clearly show with an overwhelming evidence that the petitioner was continuously and racially harassed and retaliated upon by the Respondent when he followed GM'S open door policy. In fact, the last performance evaluation of the petitioner was delayed by more than 4 months and was never given to him even when he had requested his supervisor about it on about 4-5 occasions during the 4 months period. In the end, he had an argument with his supervisor about delays in his performance evaluation in February, 1984. Due to this argument and subsequent to petitioner's following of GM'S OPEN DOOR POLICY in order to resolve this matter of his performance evaluation, the petitioner was fired by the respondent. There is overwhelming evidence in the instant case regarding petitioner's unfair performance evaluations, his unfair and racially motivated treatment in promotions due to his age, race, and national origin which are gross violations of written

statements in the employee handbook, and are serious violations of the Federal Anti-DISCRIMINATION LAW.

In the New Jersey case, Ronald Fregara v. Jet Aviation Buisness Jets, WEST'S FEDERAL SUPPLEMENT, VOL.764, NO.3, AUGUST 5, 1991, and other references in that case, the court has ruled the employee handbook to be legally binding provided the employe follows the grievance procedures in the handbook. Mr. Fregara lost the case because he did not follow the grievance procedure stated in the employe handbook. In the instant case, the petitioner followed GM's OPEN DOOR POLICY in order to resolve his employment issues, but was always retaliated upon by Management during and after petitioner's following of GM's OPEN DOOR POLICY.

The New Jersey Supreme Court has held that there is an implied covenant of good faith and fair dealing in every contract. Onderdonk v. Presbyterian Holmes of N.J. 85 N.J. 171, 182 (1981); Bak-A-Lum v. Alcoa Building Products, 69 N.J. 123, 129-130

(1976);Association Group Life, Inc. v. Catholic War Veterans of U.S., 61, N.J. 150, (1972); Palisades Properties, Inc. v. Brunetti, 44, N.J. 117, 130 (1965). As a corollary to that proposition, the supreme court of N.J. commented that it is reasonable to imply that neither party to a contract shall injure the right of the other to receive the fruits of the agreement. Onder-donk, Supra, 85 N.J. at 182 (citations omitted). In the instant case, it is very clear that Respondent intentionally and arrogantly indulged in BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING AGREEMENT DUE TO PETITIONER'S IMPLIED CONTRACT AS STATED IN EMPLOYEE HANDBOOK, AS WELL AS the EXPRESSED ONE MONTH'S NOTICE WRITTEN CONTRACTUAL AGREEMENT, BY FIRING THE PETITIONER MOST UNFAIRLY, EVEN WHEN ALL BUISNESS INTERESTS OF THE RESPONDENT WERE FULLY MET BY THE PETITIONER. The petitioner fully complied with the doctrine of exhaustion of remedies by following RESPONDENT's OPEN DOOR POLICY

before suing the RESPONDENT. The doctrine of exhaustion is well established in New Jersey. Ward v. Keenan, 3 N.J. 298 (1949). The rule has been applied to members of labor unions or other voluntary organizations seeking reinstatements or damages from the organizations. Jorgensen v. Pennsylvania R.R. Co., 25 N.J. 541, 556 (1958) (citations omitted). The rule of exhaustion has also been applied to suits arising under school laws. See Redcay v. State Board of Education, 128 N.J.L. 281, 285 (Sup. Ct. 1942). It has also been applied to cases arising under the Civil Service Act where employees claimed to have been illegally discharged. Jorgensen, Supra, 25, N.J. at 557. (citations omitted). The rule has also been applied to administrative bodies under the zoning laws. Id. at 557. (citations omitted). As previously noted, in situations involving collective bargaining agreements, it has long been the rule in New Jersey that the aggrieved employe must exhaust the remed-

ies provided by the agreement before resorting to the court for redress. see Jorgensen v. Pennsylvania R. R. Co., 25 N. J. 541 (1958); Thompson v. Joseph Cory Warehouses, Inc., 215, N.J. Super. 217 (App. Div.-1987). This principle is no less applicable here where the rights asserted by the petitioner are contained in an employe handbook. Courts in other jurisdictions have consistently held that breach of contract claims based on employe handbook are barred when an employe fails to exhaust the handbooks grievance procedures. See e.g., Schnelting v. Coors Distributing Co., 2 I.E. R. Cases (B.N.A.) 1451, 729 S.W. 2d 212 (Mo. Ct. App. 1987); Dahlman v. Oakland University, 3 I.E.R. Cases (B.N.A.) 1765, 432 N.W. 2d 304 (Mich. Ct. App. 1988); Plummer v. Hummana of Kansas, Inc., 715 Fed Supp. 302 (D.Kan. 1988). See also Suburban Hospital, Inc. v. Dwiggins, 5 I.E.R. Cases (B.N.A.) 693 (Md. Ct. App. 1990), Cert. granted, 321 Md. 46, 580 A. 2d 1066 (1990). When applying state law in diversity cases, each federal

court functions as a proxy for the entire state court system, and therefore, must apply the law that it conscientiously believes would have been applied in the state court system, which includes the state appellate tribunals. See Clark, State Law in the Federal Courts: The Brooding Omnipresence of Erie v. Tompkins, 1946, 55 Yale L.J. 267, 290-95. See also, 19 Wright, A. Miller & E. Cooper, Jurisdiction and Related Matters, 4507 (West 1982). A federal court sitting in deiversity must determine issues of state law as it believes the highest court of the state would determine them, not necessarily as they have been decided by other state courts in the past. See id. See also, Weiss v. George C. Rothwell, Inc., 496 F.2d 384 (3d Cir. 1974).

Due to all these reasons, this honorable court should rule the employe handbook to be legally binding on the Respondent in the instant case because the petitioner very faithfully complied with the Doctrine of Exhaustion remedies as stated in Respondent's

OPEN DOOR POLICY, and that petitioner was retaliated upon by the Respondent by firing him and hence petitioner's firing should be ruled as illegal and the petitioner should be reinstated to his employment by court order. The court should also rule in favor of the petitioner for collection of all damages and costs from the Respondent.

THE PETITIONER HAS VERY CLEARLY MADE A PRIMA FACIE SHOWING RACIAL EMPLOYMENT DISCRIMINATION IN HIS CASE. Hence, the lower courts - State as well as Federal are grossly in error for not granting a Trial in the instant case because racial employment discrimination under title VII is not permissible. A similar case, DOCKET NO. 89-909-407CZ,JOSEPH MARTIN V. INTERNATIONAL BUISNESS MACHINE is on trial before judge CYNTHIA STEPHENS in WAYNE COUNTY CIRCUIT COURT. The plaintiff, Mr. Joseph Martin alleges that he was denied promotions, salary increases and appropriate career counseling because he is black. Plaintiff's attorney claims that IBM'S OPEN DOOR POLICY IS A "SHAM", AND THAT MR. MARTIN WAS VERY

UNFAIRLY TREATED DUE TO HIS RACE, WHEN HE FOLLOWED OPEN DOOR POLICY RIGHT UPTO THE TOP, i.e., to IBM'S Board Chairman, Mr. Akers, and that the IBM Chairman, "put a rubber stamp to a form letter". The instant case of the petitioner is very similar to the Joseph Martin V. IBM'S case on trial. Therefore, RES-JUDICATA is not the answer in the present case which should have been decided by a full and fair jury trial in order to fully adjudicate the matter.

AGE-BIAS LAWSUITS: The petitioner wants to bring to the attention of the Honorable Court a recent decision reached by the Court in ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION V. SOLIMINO, The United States Law Week, 59 LW 4616, (1991). The court ruled unanimously that a state civil rights agency's finding that a company didn't engage in age discrimination in employment doesn't bar a worker from filing an age-bias suit in federal court.

The instant case is very similar to this decision where the petitioner's attorney

erroneously omitted to file the age discrimination count in the Wayne County Circuit Court but the petitioner is requesting to litigate this matter in the Federal Court. Hence, petitioner Rajendar Singal requests that the Honorable Court should allow his Age-Discrimination count to be litigated in the Federal Court.

Wherefore, the petitioner Rajendar K. Singal respectfully submits that JURY TRIAL should be granted to resolve all the questions in the instant case, and further this honorable court should rule that petitioner's firing was illegal due to implied contract in the employee handbook and that he should be re-instated to his employment by Court Order and that all damages and costs in the instant case be paid to the petitioner by the respondent.

Respectfully Submitted,

By: Rajendar K. Singal

(Rajendar K. Singal)

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